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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/458,677	12/10/99	MUTILANGI	W 2105.2050

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FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

EXAMINER	
DUBOIS,P	
ART UNIT	PAPER NUMBER
1761	3

DATE MAILED: 04/12/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/458,677	MUTILANGI ET AL.	
	Examiner	Art Unit	
	DuBois	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 December 1999* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
18) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, it is unclear what transitional phrase is being used. The term "by incorporating" is a relative term that renders the claim indefinite. The term "by incorporating" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The term "overall sweetness intensity" in claim 7 is a relative term which renders the claim indefinite. The term "overall sweetness intensity" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The term "aftertaste duration" in claim 8 is a relative term which renders the claim indefinite. The term "aftertaste duration" is not defined by the claim, the specification

does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The term "mouthfeel" in claim 9 is a relative term that renders the claim indefinite. The term "mouthfeel" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The term "sucrose quality" in claim 10 is a relative term that renders the claim indefinite. The term "sucrose quality" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stray-Gundersen (U.S. Patent 5,114,723) in view of Schade (U.S. Patent 3,934,047) in further view of Jenner et al (U.S. Patent 4,927,646).

Stray-Gunderson teaches a beverage that is formulated so that it can rapidly replenish water, physiological essential electrolytes, nutrient material and other compounds to people who are in need of fluid replenishment (col. 7, lines 45-55). The

electrolytes that need to be replenished are potassium, sodium, chloride, magnesium and calcium (col. 7, lines 60-65). The potassium ion component can be provided by any salt such as the chloride, bicarbonate, citrate, phosphate, hydrogen phosphate and the like (col. 8, lines 5-15). The solubulized calcium salt used in the present invention can be supplied by calcium carbonate, calcium phosphate, calcium sulfate and mixtures thereof (col. 9, lines 15-25).

Although Stray-Gundersen teaches a beverage, Stray-Gunderson is silent as to the addition of sucralose and aceulsfame-K as sweeteners to the beverage. Jenner et al (Jenner) teaches that it is desirable to add sweeteners such as sucralose and acesulfame-K together because a synergistic sweetening effect is created (U.S. Patent 4,927,646, col. 2, lines 25-35).

Although the references noted above teach a sweetened beverage, the references noted above are silent as to the addition of potassium sulfate. Schade teaches that it is desirable to add potassium sulfate to a sweetened beverage to reduce the aftertaste of artificial sweeteners (U.S. Patent 3,934,047, col. 1, lines 50-65). Furthermore, it would have been obvious to one of ordinary skill in the art to optimize the amount of sucralose, acesulfame-K, calcium phopshate, calcium sulfate and potassium sulfate in the product as they are all ingredients that affect the taste, mouthfeel and sucrose quality of the product.

Finally, Applicants' attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

> This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.

Conclusion

1. No claim is allowed.

2. Any inquiring concerning this communication or earlier communications from the examiner should be directed to Philip DuBois whose telephone number is (703) 305-0508. The examiner can normally be reached on Monday through Friday from 8:00 to 5:30. The examiner is not in the office the second and fourth Fridays of each month.

3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached at (703)-308-3959. The fax number for the group is (703)-305-3602.

4. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-0661.

Philip DuBois

11/19/00

CURTIS SHERRER
PATENT EXAMINER